IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6910 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JAYANT PAPER MILLS LTD

Versus

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Appearance:

NANAVATI & NANAVATI for the Petitioners.

M/S TRIVEDI & GUPTA for the Respondents.

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CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 01/03/2004

ORAL JUDGEMENT

This petition is filed under Article 226 of the Constitution of India challenging the communication dated 3.6.1992 produced at Annexure "O" to the petition whereby the petitioner was asked to pay an

amount of RS. 5,46,240/- which is inclusive of Rs. 2,94,455/- being the minimum water bill, Rs.2,09,799/being the amount of simple interest at the rate of 15% per annum and Rs. 41,960/- being penal interest at the rate of 3% per annum. It was also made clear in the said letter that if the amount would be paid within 60 days from the date of receipt of the said letter, penal interest at the rate of 3% per annum would not be required to be paid.

2. This petition was admitted by this Court on 16.10.1992 and by way of ad-interim relief, for granting reconnection of water supply to the petitioner, this Court has imposed a condition on the petitioner to deposit an amount of RS.1,50,000/- with the respondent Corporation immediately and further to deposit Rs.1,50,000/- latest by 9.11.1992 and to furnish bank guarantee for the remaining amount. The Court has also directed the respondent Corporation to supply water connection within 48 hours on deposit of Rs. 1,50,000/-. It was also made clear that if the condition of depositing further amount of RS. 1,50,000/- and furnishing of bank guarantee was not complied with, interim relief would stand vacated.

3. Mr. Dave, the learned advocate appearing for Nanavati and Nanavati for the petitioner submits that the respondent has charged notional amount from the petitioner and the petitioner was not liable to pay more than Rs. 22,164/-. He further submitted that the petitioner has addressed a letter dated 2nd November, 1987 to the respondent Corporation whereby correct details about minimum and maximum quantity of water required were given and it required minimum 10000 litres and maximum 20000 litres of water a day. He has further submitted that the said water connection was required for the domestic and construction purposes. Mr. Dave has further submitted as per this agreement, all necessary amount has been paid by the petitioner and because of which the respondent Corporation has issued "no objection" certificate on 28.9.1984 and 12.5.1987. Despite this fact, the respsondent Corporation has raised a demand of Rs. 17,21,360.80 ps. by its letter dated 10.7.1987 alongwith which a statement was produced containing due date of payment, amount of capital, interest and balance outstanding etc. was given. He has further submitted that the petitioner has given reply and made representations from time to time, pursuant to which, the demand was reduced to Rs.12,79,933/- by letter dated 3.3.1992. The petitioner has also made representations on various dates and the petitioner's

case was duly considered by the Board of respondent Corporation and the said demand was further reduced to Rs.5,46,214/- which was communicated to the petitioner as per letter dated 3.6.1992. It is this communication which is under challenge in this petition.

4. Mr. Barot, the learned advocate for the respondent Corporation submits that there were two agreements executed between the petitioner and the respondent Corporation. He has further submitted that the petitioner's application dated 30.5.1980 was in respect of water connection for which it was specifically agreed that water demand for 10000 to 20000 per day was for construction and domestic use and not for production. He has further submitted that for production purpose, the petitioner has not made any application for reduction in the requirement and hence the petitioner was under an obligation to pay the water charges as per the said agreement. Even with regard to no due certificate, it was stated that at that time when no due certificate was issued by the Corporation, copy of the agreement was not available with the issuing authority and as soon as it came to their knowledge, revised bill was raised and issued to the petitioner. He has further submitted that the petitioner's case was considered from time to time and ultimately, the demand was reduced to Rs. 5,46,214/-. He has further submitted that pursuant to the interim order passed by this Court for payment, the amount of 1,50,000/- was paid immediately and reconnection was granted to the petitioner and further sum of Rs.1,50,000/was also paid within stipulated period and the bank guarantee was also furnished. However, he has submitted that the bank guarantee was for a period of two years and thereafter, it was not renewed. He has submitted that the respondent Corporation has to recover balance amount of Rs.2,46,214/-. Since the respondent Corporation has issued notice for the recovery of the amount, calculated on the basis of the agreement, after considering various representations made by the petitioner, there is no justification on the part of the petitioner not to pay the amount demanded as per the letter dated 3.6.1992. He has therefore, submitted that the petition is baseless and the respondent Corporation may be permitted to enforce the recovery in accordance with law.

5. After having heard the learned counsel for the respective parties and after having gone through the contentions raised by the learned advocates for the parties and also the facts stated and the averments made in the memo of the petition as well as

affidavit-in-reply, this Court is of the view that the respondent Corporation has demanded the amount on the basis of the agreement executed between the parties. Even that amount was also substantially reduced after considering the representations of the petitioner and the demand of Rs. 17 lacs was substantially reduced to Rs. 5,46,214/-, out of which Rs. 3 lacs only were paid by the petitioner pursuant to the interim order passed by this Court. Considering the subsequent representations made by the petitioner and pursuant to which the detailed calculation for the demand was forwarded to the petitioner. Once having agreed to particular terms and conditions and on that ground, the facilities were availed of by the petitioner, it is not thereafter open for the petitioner to go back from the commitments made in the written agreement. Even otherwise also, when there is a contractual agreement between the parties, the court is reluctant to interfere with the same. The agreement is very clear to the effect that the payment of minimum charge for 70% of the agreed quantity was commenced during the first day of April and the water charges would be payable at the rates as may be fixed by the Corporation from time to time and failure to pay the minimum charges would entail penal interest. There were two agreements entered between the parties. The first was dated 15.7.1978 and the second was dated 16.11.1978. The respondent Corporation has considered the petitioner's request for reduction in the quantity from 9 lacs litres to 20000 litres by letter dated 11.9.1989 and a statement was prepared on that basis and the demand came to Rs.9,16,389/- and that was again reduced to Rs.5,46,214/-.

6. In the above view of the matter, it cannot be said that the demand raised by the respondent Corporation is contrary to the provisions contained in the agreement or in any manner unreasonable or unjustified. This Court is therefore, of the view that there is no substance in the petition and the petition deserves to be dismissed. Accordingly, this petition is dismissed. Rule discharged with no order as to costs. Interim relief stands vacated. It is open for the respondent Corporation to enforce recovery of the balance amount alongwith interest accrued thereon, if any, in accordance with law.

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